

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	CASE NO. 23-30835
PHASE ONE SERVICES LLC	§	
	§	
Debtor	§	CHAPTER 11

**DEBTOR’S EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING
PAYMENT OF PRE-PETITION WAGES IN THE ORDINARY COURSE OF BUSINESS**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Phase One Services LLC (the “Debtor”), and hereby moves this Court for entry of an order pursuant to 11 U.S.C. §§105(a), 363 and 507(a)(4)-(5) (the “Bankruptcy Code”) authorizing payment of prepetition wages (the “Motion”) in the ordinary course of business, and respectfully represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This action is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTUAL BACKGROUND

2. On March 8, 2023 ("Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 ("Bankruptcy Code").
3. The Debtor continues to manage and operate its shipping and transportation business as Debtor-In-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code.
4. The Debtor employs both W-2 employees and independent contractors (the "Contractors") to perform trucking and transportation services. The independent contractors drive the trucks owned by the Debtor.
5. The Debtor does pay wages, withhold taxes for its W-2 employees. As for the contractors, the Debtor does not withhold taxes or provide any benefits. The Debtor makes payments to the regular contractors upon delivery of the hauled load.
6. There are seven (7) W-2 employees and fourteen (14) contractors owed payment from before the filing date of March 8, 2023, as the next pay date is March 13, 2023 and March 14, 2023. The total amount of prepetition wages that needs to be paid for the March 13, 2023 payroll is \$20,051.38 and the amount needed to pay for the March 14, 2023 payroll is \$12,005.00. *See attached Exhibit "A"*. If the W-2 employees and contractors remain unpaid and are required (individually) to file claims, they will suffer great hardship and will likely terminate their relationship with the Debtor, causing unnecessary harm to the Debtor. All wages being paid are within the priority wage cap under 11 U.S.C. §507(a)(4).

III. RELIEF SOUGHT

7. The Debtor seeks an order of the Court authorizing payment in the ordinary course of business of certain pre-petition compensation owed to its W-2 employees and independent contractors.
8. The Debtor incurs payment obligations to its W-2 employees and contractors for the performance of their services in the ordinary course of business.
9. The Debtor requests authority to pay accrued compensation for services performed by the W-2 employees and contractors as of the Petition Date. As of the Petition Date, accrued and unpaid compensation totals to approximately \$32,056.38.
10. All of the W-2 employees and contractors that Debtor proposes to pay will have a priority claim for unpaid services rendered under §507(a)(4)(B) of the Bankruptcy Code. The Debtor has, or will have, sufficient funds on deposit to satisfy all the pre-petition W-2 Employee and Contractor Obligations so that the banks will not be prejudiced by any order directing them to honor the Debtor's checks for fund transfer requests with respect to such amounts.
11. The Debtor estimates that as of the Petition Date, amounts accrued for unpaid pre-petition W-2 Employees and Contractor Obligations should not exceed approximately \$35,000.00.

IV. LEGAL AUTHORITIES IN SUPPORT OF THE RELIEF SOUGHT

12. Sections 507(a)(4) and (5) of the Bankruptcy Code provide priority status for prepetition claims for wages, salaries, commissions, severance pay, vacation pay, sick leave pay, and contributions to employee benefit plans in an amount not to exceed \$15,150.00 per employee. For a plan or reorganization to be confirmed, Section 1129 requires payment of priority claims under 11 U.S.C. §507(a)(4) and (5). Because the Employee Claims would be entitled to priority status under 11 U.S.C. §507(a)(4) and (5) and because such Employee

Claims must be paid to confirm a plan of reorganization, Debtor's payment of such claims as requested herein should neither prejudice general unsecured creditors nor materially affect the Debtor's estate.

13. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. 11 U.S.C. § 105(a).

14. Section 363(c) of the Bankruptcy Code provides:

If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c).

15. Additionally, the "necessity of payment" doctrine recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential the continued operation of the debtor. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989). This doctrine is consistent with the paramount goal of chapter 11 of "facilitating the continued operation and rehabilitation of the debtor." *Id.* at 176.

16. In the instant case, the continued operation of the Debtor's business and its successful reorganization depends upon retention of the services of its W-2 employees and contractors. It is critical that the Debtors be authorized to continue regular payment of its W-2 employees and contractors. Moreover, if the checks issued and funds transfers requested in payment of the Pre-petition W-2 employees and Contractor Obligations are dishonored, or if such accrued obligations are not timely paid post-petition, the Debtor's

W-2 employees and contractors will suffer extreme personal hardship and will likely terminate their relationship with the Debtor. This would force the Debtor to seek new W-2 employees and contractors to perform its operations, driving and trucking services.

17. Further, the authority to pay Pre-petition W-2 employees and Contractor Obligations in accordance with the Debtor's pre-petition business practices is in the best interest of the Debtor, the Debtor's estate, and creditors, and will enable the Debtor to continue to operate its business in an economic, efficient manner without disruption. Because Debtor's W-2 employees and contractors are central to Debtor's operations and vital to its reorganization, the loss of personnel at this critical time would have a serious impact on the value of the Debtor's business, and its ability to reorganize under Chapter 11.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request entry of an order granting relief requested herein, and such other and further relief as is just and proper.

Respectfully submitted,

THE LANE LAW FIRM, PLLC

/s/Robert C. Lane

Robert C. Lane

State Bar No. 24046263

notifications@lanelaw.com

Joshua Gordon

State Bar No. 24091592

Joshua.gordon@lanelaw.com

6200 Savoy, Suite 1150

Houston, Texas 77036

(713) 595-8200 Voice

(713) 595-8201 Facsimile

PROPOSED COUNSEL FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Debtor's Emergency Motion for Entry of an Order Authorizing Payment of Pre-Petition Independent Contractor Obligations was served upon the US Trustee and to the parties listed on the service list below and the attached mailing matrix either via electronic notice by the court's ECF noticing system or by United States first class mail, postage prepaid, on March 8, 2023:

Debtor:

Phase One Services LLC
10604 ½ Wallisville Road
Houston, Texas 77044

US Trustee:

Office of The United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002

Notice will be electronically mailed to:

US Trustee

USTPRegion07.HU.ECF@USDOJ.GOV

Alicia Lenae Barcomb on behalf of U.S. Trustee US Trustee
alicia.barcomb@usdoj.gov

/s/Robert C. Lane
Robert C. Lane

Label Matrix for local noticing
0541-4
Case 23-30835
Southern District of Texas
Houston
Wed Mar 8 07:46:43 CST 2023

Phase One Services LLC
10604 1/2 Wallisville Rd
Houston, TX 77013-4123

4
United States Bankruptcy Court
PO Box 61010
Houston, TX 77208-1010

Ashley Williams
12910 Breezy Meadow Ln.
Houston, TX 77044-1165

Aztec Portacans & Containers, LTD
2001 W 34th Street
Houston, TX 77018

Cashable LLC
2 Executive Blvd 305
Suffern, NY 10901-8219

City of Houston
PO Box 1560
Houston, TX 77251-1560

Cloud Fund, LLC
400 Rella Blvd Suite 165-101
Suffern, NY 10901-4241

Cosco Shipping Lines
15600 JFK Blvd 400
Houston, TX 77032-2344

DCLI Chassis
PO Box 603061
Charlotte, NC 28260-3061

Dakota Financial
11755 Wilshire Blvd Suite 1670
Los Angeles, CA 90025-1526

Department of Public Safety & Corrections
PO Box 61047
New Orleans, LA 70161-1047

Evergreen Shipping Agency
16000 North Dallas Parkway 400
Dallas, TX 75248-6609

Falcon Fleet Maintenance
PO Box 7228
Houston, TX 77248-7228

Financial Pacific Leasing
3455 S. 344th Way Ste 300
Federal Way, WA 98001-9546

HAPAG-LLOYD (AMERICA) LLC
Regional Headquarters
399 Hoes Lane
Piscataway, NJ 08854-4115

HMM Co., LTD
222 West Las Colinas Blvd 700
Irving, TX 75039-5468

Harris County Toll Road Authority
PO Box 4440
Houston, TX 77210-4440

Houston Industrial Yard, Inc./Triton Realty
3657 Briarpark Drive 300
Houston, TX 77042-5266

IPFS Corporation
P.O. Box 412086
Kansas City, MO 64141-2086

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Law Offices of Isaac H. Greenfield PLLC
2 Executive Blvd 305
Suffern, NY 10901-8219

M&M Tire and Mechanic Shop
11649 Wallisville Road
Houston, TX 77013-3418

Mediterranean Shipping Company Inc.
4700 W Sam Houston Pkwy N 250
Houston, TX 77041-8225

Motive Credit Card
3500 South Dupont Highway
Dover, DE 19901-6041

Navitas Credit
203 Fort Wade Road 300
Ponte Vedra, FL 32081-5159

OTR Leasing
9100 Liberty Drive
Liberty, MO 64068-7500

Padfield & Stout
420 Throckmorton Street Suite 1210
Fort Worth, TX 76102-3792

Plexe LLC
6295 Greenwood Plaza Blvd 100
Englewood, CO 80111-4978

Sealand Maersk Company
9300 Arrowpoint Blvd
Charlotte, NC 28273-8136

Shark Trucking
12106 Mesa Drive
Houston, TX 77016-1622

Silverline Services Inc.
1334 Peninsula Blvd 160
Hewlett, NY 11557-1226

Small Business Administration
409 3rd St SW
Washington, DC 20416-0005

Stream
PO Box 650261
Dallas, TX 75265-0261

TBS Factoring Service
PO Box 18109
Oklahoma City, OK 73154-0109

TRAC Intermodel
750 College Road East
Princeton, NJ 08540-6646

TXTAG
PO Box 650749
Dallas, TX 75265-0749

The Feldman Law Firm, P.C.
3000 Marcus Avenue 2W15
New Hyde Park, NY 11042-1005

The LCF Group
3000 Marcus Avenue 15
New Hyde Park, NY 11042-1005

The Lane Law Firm
6200 Savoy Dr Ste 1150
Houston, TX 77036-3369

Transfer Shipping
25 W I-65 Service Road
Mobile, AL 36608-1201

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002-2604

Waste Management
1001 Fannin Suite 4000
Houston, TX 77002-6711

Willscot
4646 E Van Buren Street
Phoenix, AZ 85008-6915

Ying Yang
3250 Briarpark Dr Suite 201
Houston, TX 77042-4263

ZiM American Integrated Shipping Lines
5801 Lake Wright Drive
Norfolk, VA 23502-1863

Robert Chamless Lane
The Lane Law Firm
6200 Savoy Drive
Ste 1150
Houston, TX 77036-3369

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Phase One Services LLC
10604 1/2 Wallisville Rd
Houston, TX 77013-4123

(u)Williams Scotsman, Inc.
10604 1/2 Wallisville Road
77103

End of Label Matrix	
Mailable recipients	46
Bypassed recipients	2
Total	48